

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ABSTRAX, INC.

Plaintiff,

vs.

DELL, INC., a Delaware corporation; and
GATEWAY, INC., a Delaware corporation,

Defendants.

CASE NO. 2:07-CV-221 (DF)(CE)

Jury Trial Demanded

ABSTRAX, INC.

Plaintiff,

vs.

SUN MICROSYSTEMS, INC.,

Defendant.

CASE NO. 2:07-CV-333 (TJW)(CE)

Jury Trial Demanded

Abstrax's Surreply to Defendant Sun Microsystems' Motion for Change of Venue

Plaintiff Abstrax, Inc. hereby submits this surreply to Sun Microsystems, Inc.'s ("Sun") motion for change of venue. This surreply addresses two points raised in Sun's reply brief: (1) consolidation of this case with Case No. 2:07-CV-221 ("Dell"), and (2) the page limits for the opposition. The remaining issues raised in Sun's motion for change of venue and reply brief are addressed in Abstrax's opposition to Sun's motion for change of venue.

. **A. This case is consolidated with *Dell*.**

In support of its motion to transfer, Sun contends that “Abstrax erroneously claims that this case is consolidated with the Dell and Gateway case.” Sun’s Reply in Support of it Motion for Change of Venue (“Reply”) at 1. Sun states that “the Court has not issued an order consolidating the instant case with” *Dell*. Reply at 2.

Sun’s position, that this case is not consolidated with *Dell*, is wrong. In the scheduling conference in *Dell*, “[c]onsolidation of [*Dell*] with Sun was discussed. The Court advised that it would consolidate for purposes of the *Markman* and discovery.” Scheduling Conference, Case No. 2:07-cv-00221, Document 37. Further, all of the parties in both cases, including Sun, agreed that the two cases should be consolidated for the *Markman* proceeding and discovery, as reflected in the Joint Conference Report that was filed with the court prior to the Scheduling Conference. Joint Conference Report, Case No. 2:07-cv-00221, Document 35.

Since this case is consolidated with *Dell*, transfer would cause an enormous waste of judicial, party, and third-party witnesses’ time and resources, as well as create a grave risk of inconsistent rulings, as discussed in Abstrax’s opposition brief. Because the factors relating to private convenience and the public interest weigh strongly against transfer, transfer must be denied.

B. Length of opposition brief.

In its Reply, Sun asserts that Abstrax’s Opposition “violates Local Rule 7(a)(2), which limits opposition briefs to 15 pages.” Reply at 1, fn.1. Abstrax disagrees. Since Sun’s motion for change of venue is a dispositive motion, Abstrax is entitled to

thirty pages under Local Rule CV-7(a)(1). Thus, Sun's request that the Court reject Abstrax's opposition should be denied.

Dated: December 21, 2007

Respectfully submitted,

By: /s/ Gregory S. Dovel
Gregory S. Dovel
CA State Bar No. 135387
Sean A. Luner
CA State Bar No. 165443
Christin Cho
CA State Bar No. 238173
Dovel & Luner, LLP
201 Santa Monica Blvd., Suite 600
Santa Monica, CA 90401
Telephone: 310-656-7066
Facsimile: 310-657-7069
Email: christin@dovellaw.com
Email: greg@dovellaw.com
Email: sean@dovellaw.com

S. Calvin Capshaw
State Bar No. 03783900
Email: ccapshaw@mailbmc.com
Elizabeth L. DeRieux
State Bar No. 05770585
Email: ederieux@mailbmc.com
Brown McCarroll, L.L.P.
1127 Judson Road, Suite 220
Longview, TX 75601
Telephone: 903-236-9800
Facsimile: 903-236-8787

Robert Christopher Bunt
State Bar No. 00787165
Email: rcbunt@pbatyler.com
Robert M Parker
State Bar No. 15498000
Email: rmparker@pbatyler.com
Parker, Bunt, & Ainsworth, P.C.
100 East Ferguson, Ste. 1114

Tyler, TX 75702
Telephone: 903-531-3535
Facsimile: 903-533-9687

Attorneys for Plaintiff
Abstrax, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document was served, via E-mail, on counsel for Defendants this 21st day of December, 2007.

/s/ Christin Cho